2013 IL App (2d) 121231-U
Nos. 2-12-1231 & 2-12-1236 cons.
Order filed September 25, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MARY BETH KONTNY n/k/a Mary Beth Justen, Petitioner-Appellee, and MARK KONTNY, Respondent-Appellant.	)))))))))))	Appeal from the Circuit Court of Lake County. No. 03-D-2543 Honorable, Jay Ukena, Judge, Presiding.

In re MARRIAGE OF MARY BETH KONTNY, n/k/a Mary Beth Justen, Petitioner-Appellant, and MARK KONTNY, Respondent-Appellee.	)))))))))))	Appeal from the Circuit Court of Lake County. No. 03-D-2543 Honorable, Charles D. Johnson, Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: We find no abuse of discretion in denying the petition to terminate maintenance and modifying maintenance at a reduced amount. Mark's first motion to reconsider was untimely and the second motion to reconsider was improper. We find no abuse of discretion in denying Mary Beth's amended petition for contribution to attorney fees. Appeals affirmed.

¶ 2 Respondent, Mark Kontny, appeals from the order of the circuit court of Lake County modifying rather than terminating maintenance to petitioner, Mary Beth Kontny, and from the order denying his motion to reconsider (appeal No. 2-12-1231). Mark contends that the trial court abused its discretion in extending maintenance, rather than terminating it. Specifically, Mark maintains that the trial court abused its discretion by (1) failing to consider that Mary Beth had become self-sufficient by earning a salary almost the precise amount that was awarded to her as rehabilitative monthly maintenance; (2) by permitting Mary Beth to introduce evidence of Mary Beth's lifestyle during their marriage; (3) by finding that the original maintenance award to Mary Beth was not rehabilitative; and (4) by considering expenses which Mary Beth was not entitled to claim. Mark also contends that the trial court abused its discretion by denying his motion to reconsider. Mary Beth appeals from the order denying her amended petition for contribution to attorney fees (appeal No. 2-12-1236). We granted Mark's motion to consolidate the appeals. For the following reasons, we affirm the orders appealed.

¶ 3 I. BACKGROUND

¶ 4 A. Judgment for Dissolution of Marriage and other Pre-trial Proceedings

¶ 5 A judgment for dissolution of marriage was entered on January 22, 2007. Both parties had made substantial contributions to the marriage. Mark had been employed through the majority of the marriage. Mary Beth had been employed for a period and then devoted her time and efforts to managing the household and raising the parties' four children. Mary Beth was not employed at the time of the judgment of dissolution and had not been employed for about 11 years prior to that time.

¶ 6 With regard to maintenance, the judgment of dissolution provides that "Mark shall pay Mary Beth unallocated maintenance. Based on Mark's gross income for 2005 of $306,213.59, the maintenance shall be $7,600.00 per month effective March 30, 2006." The judgment further provides that "[t]his maintenance award is rehabilitative in nature for a 2 year period. Mary Beth is under an affirmative obligation to make an effort to reenter the work force and contribute to her own support." Mark also was ordered to pay 40% of the net of any bonus to Mary Beth, after taxes, for 2006 forward as and for maintenance.

¶ 7 On March 3, 2008, in ruling on posttrial motions filed by both parties, maintenance was modified so that Mark was to pay Mary Beth 30% of his gross bonuses for 2007 and 2008. The order also provides that "maintenance to the Wife is to be reviewable 2 years from the entry of the original Judgment for Dissolution of Marriage, January 22, 2007."

¶ 8 On January 14, 2009, Mary Beth filed a petition to extend maintenance, claiming that Mark had not distributed her share of the marital property to her, that the children lived with her and their son, Jason, had become seriously ill, that Mark's assets and income greatly exceeded hers, and that further maintenance was warranted to maintain the marital standard of living. On March 3, 2009, Mark cross-petitioned to terminate maintenance, in which he averred, *inter alia*, that the initial maintenance was rehabilitative in nature, that Mary Beth had been employed full-time for a substantial period, that the children were emancipated, and that Mary Beth was self supporting.

¶ 9 B. Trial

¶ 10 Over Mark's objection to relevancy, the trial court permitted Mary Beth to testify to the entire history of the parties' marriage. Mary Beth was a licensed CPA in Wisconsin and had obtained her Illinois license eight months before trial. She was a manager-in-training for an accounting firm.

Her 2009 wages were $86,869. She had been at the firm for 2½ years, and prior to that time, she had not worked for the last 15 years. Mary Beth had 15½ years of work experience, including her time at her present position. She had not been offered a senior management position because she had been out of work too long.

¶ 11 Mary Beth had given up her career so Mark could pursue his. She had been involved in PTO and volunteer work, and she was an important part of the children's lives while Mark traveled for work. When Mary Beth lived in Connecticut during the marriage, she had been employed part time as an accountant, except for one year, and she had been offered a partnership. However, she could not accept it due to their move to Illinois because of Mark's career. Prior to living in Connecticut, she and Mark lived in Madison, Wisconsin, for five years. Mary Beth worked full time as a supervisor at a CPA firm there. If she had stayed in Madison for five more years, she could have become a partner, but the couple moved to Connecticut for Mark's job.

¶ 12 The former marital residence is located in Libertyville, Illinois. The residence is 5,700 square feet on an acre lot, adjacent to open lands and a wooded area. The house has a cedar shake roof, gazebo, hot tub, and pool. The basement is finished with a bar and an exercise area. The house has a two-tiered wood deck that leads to a large, red brick patio. The lot was well maintained with gardens and stone walkways.

¶ 13 During the marriage, Mary Beth and Mark were able to vacation annually. She would usually travel to Wisconsin with the children and stay for a week or two. The family also would take vacations to warm climates like Puerto Rico, Jamaica, or Florida. They owned a boat and would take it out on weekends, and the children would go water skiing and tubing.

¶ 14 In October 2009, Mary Beth acquired a four bedroom, three and a half bath home with an office and a two and a half car garage, which she purchased for $560,000. Mary Beth testified that this house is significantly smaller than the marital residence.

¶ 15 The parties' oldest son, Justen, who was 23 years old, lived with Mary Beth. He had graduated from college but could not find a job. The parties' son, Jason, who was 21, also lived with her. Jason had been diagnosed in September 2008 as suffering from schizophrenia. Jason did not finish college, had been hospitalized three times, and had been in a mental health facility. Mark did not pay child support for Jason while he lived with Mary Beth. Mary Beth testified that, with two adult sons living with her, her groceries cost twice as much as she had listed in her affidavit.

¶ 16 After the divorce, when the children were not in school, the children lived with Mary Beth. She provided their food and other expenses. Mary Beth worried that Justen could not aggressively look for work because he needed to stay home and watch over Jason while Mary Beth worked.

¶ 17 From 1996 through 2003, Mary Beth had no earnings because she was a stay-at-home parent. However, Mark did not have earnings for 1982 through 1984, and Mary Beth did. Mark had no income during that time because he was in graduate school.

¶ 18 Mary Beth's gross income for 2009 from all sources was $224,758. This included $126,554 in maintenance from Mark and $86,869 in wages from her employer. Mary Beth could not confirm the balances of her retirement accounts because those accounts did not include monies that would be disbursed to her from the unresolved qualified domestic relations orders. Mary Beth's 401(k) match was $4,000 in 2009. Her IRA had a balance of approximately $52,000. Mary Beth wrote two checks for cash for $150,000 and $60,000, respectively, that were transferred to certificates of deposit, the source of the funds being from a division of assets between the parties and maintenance

from a bonus. Since the divorce, Mary Beth had not been able to purchase any stocks of her own and add to her savings, except for contributing to her IRA account from her employer.

¶ 19 An affidavit submitted by Mary Beth, dated February 28, 2010, sets forth a monthly salary of $7,278, $10,546 in average monthly maintenance, including payments from Mark's bonus, and a monthly deficit of $6,452 due to $14,610 in monthly expenses.

¶ 20 On cross-examination, Mary Beth testified that her financial affidavit was based upon all of her actual expenses for the last year. The affidavit noted actual expenses relating to furniture, appliance repair, and replacement, and she would have such costs in the future. Among other expenses, the home needed new carpeting, the walls needed to be painted, and the blinds needed to be replaced.

¶ 21 Mary Beth noted that she paid $842 per month for attorney fees and believed such fees would be incurred in the future. The affidavit also noted expenses incurred for the children living with her, and expenses for gifts, a family pet, and a cell phone. Justen was to move out eventually, but she had no idea whether Jason ever would be able to move, as he would suffer from schizophrenia for the rest of his life.

¶ 22 Mark testified that he was a vice president of Global Pharmaceutical and Analytical Sciences at Abbott Laboratories. His new wife worked at the McKesson Corporation managing health care accounts. Mark did not know his wife's income; she did not contribute towards such expenses as the mortgage, homeowner's insurance, utilities, groceries, internet, homeowner's association, cable TV, or transportation.

¶ 23 Mark paid $99,000 in 2005 toward the purchase price of $492,000 for his new home. The house is 2,300 square feet, is landscaped, and has a deck, patio, and a view of the lake, where Mark keeps his boat.

¶ 24 Mark's financial affidavit indicated that his income for 2009 was $471,753. Abbott provided him with a cell phone and home internet service. These items did not appear on his financial affidavit. Approximately 25% of his work entailed traveling, and Abbott paid for his meals while Mark was on business trips. Abbott also provided life insurance equal to his income for a year, and that benefit was not reflected on his paystub. In 2009, he had $42,908 in restricted stock units that vested over the course of the year. Mark's 2009 annual salary for the first three months of the year was $265,000, but this was increased to $277,000 annually.

¶ 25 Mark owned a 2006 Mercedes Benz. Two years before trial, Mark traded his boat for a new one, which he did not finance. His money market account, which mostly contained the proceeds from the sale of the marital home, totaled $117,692. His retirement assets amounted to $805,000. He estimated that his half of the 401(k) accounts was $369,778. His deferred compensation account, which was non-marital and had accrued after the divorce, was valued at $313,245. Mark had $92,668 in stock options available to him and had 1,691 shares of Abbott stock, the market value of which was $118,986. Mark also had $29,313 in IRA accounts.

¶ 26 From 2007 through 2009, Mark paid Mary Beth maintenance from his base income of $97,185, $91,200, and $91,200, respectively. For the year 2006, Mark paid Mary Beth $63,000 in maintenance. For 2010, up to the time of the trial, Mark had paid $17,548. Over that approximately four-year period, Mark had paid an additional $133,181 as maintenance from his bonuses.

¶ 27 Mark's social security statement reveals that Mark's income from 2006 was $373,217. His 2009 income was $471,753, which included $66,862 in restricted long-term incentive stock from his employer. His salary in 2009 was $277,000, and his bonus was $117,846. Mark's excess net income after taxes, maintenance, and expenses was $3,284, and he put $5,000 per month into deferred compensation. He also received a matching 401(k) payment that is not listed on his W-2 form.

¶ 28 During closing argument, Mark argued that Mary Beth had rehabilitated herself, making more than initially anticipated, and that it was improper to measure how Mary Beth could maintain the marital standard of living simply by equally dividing the income Mark had earned in 2006. Mark argued that all of the testimony about employment history during the marriage had been irrelevant since it previously had been considered by the trial court for the initial judgment. Mark noted that the initial two years of rehabilitative maintenance actually had lasted for three years and three months due to the delay in entering the original judgment. Mark challenged the amount of Mary Beth's claimed expenses and stated the parties' marital standard of living had been modest. Mark requested that the court terminate maintenance.

¶ 29 On September 7, 2010, the trial court held that the "rehabilitative" nature of the original judgment of dissolution had been modified as "reviewable" by the former judge on reconsideration. Applying the factors set forth in sections 504 and 510 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (75 ILCS 5/504, 510 (West 2010)) to the evidence, the court determined that, while the assets had been split at the time of the dissolution, Mark's estimated worth was $1.5 million and Mary Beth's was slightly over $600,000. It also found that Mary Beth's income had gone from zero to $88,000, and Mark's had increased by $139,000, and that Mark would acquire more earnings and assets in the future and that Mary Beth had been limited by her lack of

employment during the marriage. The court further noted that Mary Beth's needs appeared to be greater than Mark's, given that one son living with Mary Beth suffered from schizophrenia. The court found that the standard of living during the marriage was that Mark earned $337,699 in 2006. Even though the parties had lived frugally and saved a lot of money, the court determined that the standard of living related to the amount of money made rather than how it was spent. The court concluded that "Mary Beth is unable to earn enough funds presently to support herself and the standard of living enjoyed during the marriage."

¶ 30 In arriving at the amount and length of maintenance, the court looked to local Lake County court guidelines[1] and concluded that maintenance should be reduced to $5,400 per month but extended for a period of 58 months, and that Mary Beth could file a petition for review by July 7, 2015. The court entered a written order consistent with these findings on November 22, 2010. The order did not contain Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) language finding there was no just reason to delay the appeal.

¶ 31 D. Posttrial Proceedings

¶ 32 On March 31, 2011, Mark filed a motion to reconsider the trial court's ruling pursuant to section 2-1203 of the Code of Civil Procedure (725 ILCS 5/2-1203 (West 2010)). The trial court denied the motion to reconsider on October 19, 2011.

¶ 33 Thereafter, Mark filed a notice of appeal and an amended notice of appeal on November 8, 2011, both of which complained of the trial court's November 22, 2010, ruling pertaining to

[1]The court did not explain the source or nature of these purported local guidelines and Mark did not submit a copy for the record on appeal.

maintenance. We dismissed the appeal as premature due to other claims that were pending before the trial court. *In re Marriage of Kontny*, 2012 Ill. App (2d) 111141-U.

¶ 34 On August 22, 2012, Mark filed a second motion for reconsideration, pursuant to section 2-1203, again seeking a reconsideration of the November 22, 2010, order extending and reducing maintenance. The motion alleged that there was newly discovered evidence regarding Mary Beth's April 23, 2012, financial affidavit, which disclosed greater income than compared to her income at the time the November 22, 2010, order was entered and which also disclosed that she was receiving company profits and owned a second residence from which she received rental income. Mark requested reconsideration of the maintenance order or for such other and further relief as the court deemed proper.

¶ 35 The trial court denied Mark's posttrial motion on October 22, 2012. The court found that the motion to reconsider did not allege that there were any facts in existence at the time of the March 2010 hearing that Mark did not know or could have reasonably discovered, and that the affidavit was presented to Mark on April 23, 2012, describing Mary Beth's income and resources more than two years after the close of proofs.

¶ 36 E. Mary Beth's Amended Petition for Interim Attorney Fees

¶ 37 On October 16, 2012, the trial court conducted a hearing on the amended petition for interim attorney fees. Mary Beth's April 23, 2012, affidavit initially indicated $245,208 in cash assets, $622,877 in retirement assets, and $35,578 in investment accounts, and monthly debts that exceeded her income each month in the amount of $847. However, by October 15, 2012, her supplemental affidavit indicated that Mary Beth had undertaken the responsibility of acquiring a residence for her adult children and that her cash accounts were reduced to $151,126.

¶ 38 Mary Beth testified that she was a non-equity partner at the accounting firm, self-employed, and was receiving a draw. As a non-equity partner, she had not received any payments relating to profit. Her monthly income, with maintenance, was $10,552, and her monthly expenses were $11,399. Mary Beth testified that she had paid some of the attorney fees identified in her affidavit, some of which was paid by Mark. She did not have the expense of college costs for one child of the parties, but she had the expense of college costs for another child. The adult children paid the mortgage on the home she bought for them. On October 18, 2013, the trial court denied the amended petition for interim attorney fees, essentially finding that, while Mary Beth's affidavit demonstrated expenses that exceeded her income, she could eliminate expenditures and pay attorney fees within a reasonable time without invading principal or touching assets.

¶ 39 Mark timely appeals the trial court's order, seeking review of the November 22, 2010, order extending maintenance at a reduced rate and review of the October 22, 2012, order denying his motion for reconsideration. Mary Beth appeals the denial of her amended petition for contribution to attorney fees, which had accrued from the appeal that had been dismissed by this court for lack of jurisdiction.

¶ 40 II. ANALYSIS

¶ 41 A. Mark's Appeal

¶ 42 1. Maintenance

¶ 43 Mark contends that the trial court abused its discretion in extending maintenance, rather than terminating it. Mark maintains that the trial court abused its discretion by (1) failing to consider that Mary Beth had become self-sufficient by earning a salary almost the precise amount that was awarded to her as rehabilitative monthly maintenance; (2) by permitting Mary Beth to introduce

evidence of Mary Beth's lifestyle during their marriage; (3) by finding that the original maintenance award to Mary Beth was not rehabilitative; and (4) by considering expenses to which Mary Beth was not entitled to claim.

¶ 44 The trial court's ruling on a request to modify or terminate maintenance will not be disturbed absent an abuse of discretion. *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1003 (2008). The burden is on the party seeking the modification to show a substantial change in circumstances since the entry of the original maintenance award. *In re Marriage of Pedersen*, 237 Ill. App. 3d 952, 956 (1992); 750 ILCS 5/5 10(a-5)(West 2010) (requiring a substantial change and listing various factors to consider). "A maintenance award can be modified either when the needs of the spouse receiving the payments change or the ability of the spouse making the payments changes." *Pedersen*, 237 Ill. App. 3d at 956 (quoting *In re Marriage of Garelick*, 168 Ill. App. 3d 321, 326 (1988)).

¶ 45 Mark contends that the trial court expressly allowed Mary Beth to testify to "the entire history of the marriage, including jobs, homes, incomes, and expenses." He contends that these matters were *res judicata* since the original maintenance award makes those facts established as of the time of its entry. Mark asserts that, in postjudgment matters, the court may only consider evidence going back to the latest petition.

¶ 46 In general, modification and termination of maintenance and support obligations are governed by sections 502, 504(a), and 510(a-5) of the Dissolution Act. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). "Under sections 502 and 504(a), unless the parties have agreed to specific terms for modification or termination of maintenance in a written agreement pursuant to section 502, the court must consider the statutory factors set forth in *subsections (1) through (12) of section 504(a)* in post-decree modifications of maintenance." (Emphasis added.) *Blum*, 235 Ill. 2d at 31.

¶ 47 Section 510 of the Dissolution Act provides that "[a]n order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504." 750 ILCS 5/510(a-5) (West 2010).

¶ 48 Contrary to Mark's argument, evidence of certain circumstances surrounding the marriage is expressly permissible by statute. For example, section 504(a)(4) permits the court to consider evidence of "any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage." 750 ILCS 5/504(a)(4) (West 2010). Section 504(a)(6) allows the court to consider evidence of "the standard of living established *during the marriage*." (Emphasis added.) 750 ILCS 5/504(a)(6) (West 2010). Section 504(a)(10) allows consideration of "contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse." 750 ILCS 5/504(a)(10) (West 2010).

¶ 49 Moreover, such evidence is not viewed as *res judicata.* In *In re Marriage of Carpel*, 232 Ill. App. 3d 806 (1992), the ex-wife testified at a hearing on a petition to extend and increase maintenance about how she supported her ex-husband through law school and that she quit work because he did not want her to work at all. Like the objections raised by Mark here, the ex-husband in *Carpel* objected to the ex-wife's testimony, arguing that the ex-wife "relitigates this divorce every time we have a hearing. We go back into facts and matter[s] which have [already] been litigated with various judges." *Carpel*, 232 Ill. App. 3d at 831. The circuit court sustained the objection,

stating that "some employment she may or may not have had during the first year of marriage is too remote," and this evidence was introduced during the dissolution proceedings, which the court previously would have considered in making its initial ruling for maintenance. *Id.* Evidence of the ex-wife's prior lifestyle arose again and the circuit court sustained the objection on the ground that the original judge had already considered the ex-wife's prior lifestyle in initially setting rehabilitative maintenance. *Id.*

¶ 50 The Fourth District Appellate Court disagreed with the trial court's ruling, concluding that "the court should admit testimony on how the parties lived during their marriage," as such testimony would bear directly on the propriety of any extended and increased maintenance. *Id.* Furthermore, the appellate court noted that this evidence also would be relevant to an evaluation of the reasonableness of the ex-wife's lifestyle had no dissolution of marriage occurred, as compared to the current lifestyle without extended or increased maintenance. *Id.* We find that the trial court did not abuse its discretion by allowing Mary Beth to testify to the history of the marriage.

¶ 51 Mark next argues that the trial court erred in finding that the "rehabilitative" nature of the original judgment of dissolution had been modified as "reviewable" by the former judge on reconsideration. Even if we were to conclude that the trial court erred in finding that maintenance was reviewable rather than rehabilitative, the evidence supports the trial court's ultimate determination.

¶ 52 The Dissolution Act authorizes rehabilitative, or time-limited maintenance, so that the spouse receiving the support has the incentive to use diligence in getting the training or skills necessary to attain self-sufficiency. *In re Marriage of Pearson*, 236 Ill. App. 3d 337, 347 (1992). The goal must be balanced against a realistic appraisal of the likelihood that the spouse receiving support will be

able to support herself in some reasonable approximation to the standard of living established during the marriage, especially where the marriage was of a long duration and the spouse has had a long absence from the labor market, as in the present circumstance. See *Id*. A duty to seek financial independence does not require the party receiving maintenance to liquidate his or her assets in order to achieve that independence. *Carpel*, 232 Ill. App. 3d at 828. The trial court must balance the realistic ability of the spouse to support herself in an approximation of the standard of living enjoyed during the marriage against a goal of financial independence. *Id*.

¶ 53 Before deciding to modify Mary Beth's maintenance award, the trial court heard evidence establishing that Mary Beth and Mark enjoyed a high standard of living during their 25½-year marriage and Mary Beth had been a stay-at-home mother from 1996 until 2003. The couple maintained a large residence, possessed a boat, and vacationed often. Although they lived frugally and saved money, Mark's earned income in 2006, the year the parties divorced, was $337,699. Upon dissolution of the marriage, the judgment divided the parties' assets equally.

¶ 54 Mary Beth's income had gone from zero to approximately $88,000 and did not increase over the first few years of employment, while the evidence reveals that Mark's had increased by $139,000. Mary Beth's earnings and assets had been limited by her lack of employment during the marriage. Due to her long absence from work, she is not where she once was in terms of her position. On the other hand, Mark's income has increased and the evidence shows that he has a greater ability than Mary Beth to earn and increase his income in the future. Mark's estimated worth is slightly more than $1.5 million and Mary Beth's is slightly above $600,000. While Mary Beth is now employed and making a fair salary, her expenses were such that it was not an abuse of discretion to reduce but extend maintenance.

¶ 55 Mark argues that the trial court improperly extended maintenance based on his income rather than on Mary Beth's needs. Contrary to Mark's argument, the trial court did not base its decision solely on Mark's increased income. Rather, the court explicitly considered Mark's 2006 income to establish the standard of living during the marriage. See 750 ILCS 5/504(a)(1) (West 2010).

¶ 56 Mark argues that the trial court improperly considered expenses which Mary Beth was not entitled to claim, including monthly expenses for attorney fees and expenses for supporting their emancipated children. Mark cites no authority for this proposition. Regardless, such evidence bears directly on the propriety of any extended and increased maintenance and is relevant to Mary Beth's needs. Much of Mary Beth's income was used to provide for her adult children, including for Jason who suffers from schizophrenia. Moreover, whether a person is able to meet his or her reasonable needs and become financially independent is still set in the context of what the standard of living was during the marriage. See *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10. As set forth above, it was appropriate for the trial court to consider not only Mary Beth's current needs but also how much maintenance was necessary to allow her to enjoy a standard of living comparable to that which she had enjoyed during the marriage.

¶ 57 Mark specifically raises the argument in his reply brief that the trial court's use of Lake County guidelines to determine the terms of the modified maintenance was reversible error. While the record does not show that the trial court failed to consider the statutory factors, and its decision was not an abuse of discretion in light of the evidence presented, we nevertheless discourage the use of such a formulaic approach. We conclude that the trial court considered the enumerated statutory factors and that the record supports its decision to modify maintenance for 58 months at a reduced amount.

¶ 58 2. Motion to Reconsider

¶ 59 On November 22, 2010, the trial court entered the order extending but reducing maintenance. On March 31, 2011, Mark filed a motion to reconsider the trial court's ruling pursuant to section 2-1203 of the Code, which the trial court denied. Mark appealed. After we dismissed the appeal as premature, the parties resolved the pending issue of attorney fees by order of August 6, 2012, in which the trial court stated that it was a final order. On August 22, 2012, Mark filed a second motion for reconsideration concerning the maintenance extension, pursuant to section 2-1203. Mark alleged that, before the issue of attorney fees was resolved, Mary Beth's financial condition as of April 23, 2012, showed that her income had increased to $120,000 per year and thus, constituted a basis to reconsider the November 22, 2010, order.

¶ 60 Mark filed a prior motion for reconsideration after the maintenance trial, which was denied. Since that motion was filed and ruled upon *before* the maintenance order was final, Mark argues on appeal that he is entitled to re-file for reconsideration after finality had been reached. Mary Beth responds that a party is only entitled to one posttrial motion attacking the final judgment in a nonjury case and that, once the motion has been denied, the party has no other recourse but to accept the trial court's judgment or file a notice of appeal within 30 days of the denial. *Benet Realty Corp. v. Loan Association*., 175 Ill. App. 3d 227, 235 (1988). Because Mark filed a second posttrial motion, Mary Beth argues that it is an improper successive postjudgment motion.

¶ 61 In finding that we lacked jurisdiction over the first appeal, we held that there had not been a final judgment concluding the proceedings because of pending motions. *In re Marriage of Kontny*, 2012 Ill. App (2d) 111141-U. A motion to reconsider that is filed before the final judgment is entered is not timely and does not extend the time for filing a notice of appeal. *Stoneridge*

Development Company, Inc. v. Essex Insurance Company, 382 Ill. App. 3d 731, 740 (2008). Mark's first motion to reconsider was untimely, as it was filed before a final judgment was entered. If Mark had wanted to preserve the issues raised in his first motion to reconsider for appeal, it was incumbent on him to re-file the motion after the final judgment was entered.

¶ 62 Furthermore, the problem with the August 22, 2012, motion to reconsider is that Mark raised evidence that post-dated the evidentiary hearing by about two years. This was not a proper motion to reconsider either. As pointed out by Mary Beth, if Mark had believed that the income information constituted a substantial change in circumstances, he should have filed a petition to modify the 2010 maintenance order. See 750 ILCS 5/510 (West 2010).

¶ 63 B. Mary Beth's Appeal

¶ 64 Mary Beth contends that the trial court abused its discretion in denying her amended petition for contribution to attorney fees under section 508(a) of the Dissolution Act (750 ILCS 5/508(a) (West 2010)) for the defense of the initial appeal filed by Mark. Mary Beth alleges that Mark had undertaken an appeal that she was forced to defend, and following this court's May 30, 2012, summary order dismissing Mark's appeal, she had incurred approximately $13,400 in attorney fees and costs.

¶ 65 Mary Beth argues that the evidence presented at the hearing on the petition demonstrated that there was a great disparity in actual earning and earning capacity between the parties. She relies on the Fourth District Appellate Court's decision in *Carpel* for the proposition that a trial court abuses its discretion in not awarding attorney fees under section 508(a) when the evidence reveals a great disparity in actual earnings and earning capacity, even when the parties both have sufficient assets or income to pay their own attorney fees. Moreover, she appears to assert that, because Mark did

not challenge the authority of *Carpel*, we should reverse the trial court's denial of her petition for attorney fees.

¶ 66 We initially note that we are not bound by a decision in another district. See *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008) (under the doctrine of *stare decisis*, "the opinion of one district, division, or panel of the appellate court is not binding on other districts, divisions, or panels"). If we are not bound by *Carpel*, we fail to see how we must reverse the trial court's determination merely because Mark did not attempt to distinguish it.

¶ 67 Our supreme court has stated that a trial court has discretion to award attorney fees under section 508(a) when one party lacks the financial resources and the other party has the ability to pay. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). Courts, including *Carpel*, continue to cite and rely on this proposition to determine whether a trial court has abused its discretion in denying an award of attorney fees. *Carpel*, 232 Ill. App. 3d at 832, citing *In re Marriage of Edsey*, 199 Ill. App. 3d 39, 57 (1990); see also *In re Marriage of Keip*, 332 Ill. App. 3d 876, 884 (2002); *In re Marriage of McGuire*, 305 Ill. App. 3d 474, 479 (1999). Logically, evidence establishing a gross disparity in income and income potential is a factor to consider in determining whether the spouse seeking relief is financially unable to pay and the other spouse has the ability to pay. However, it is not the only factor a trial court weighs. Other factors to consider are the allocation of assets and liabilities between the parties, any maintenance awarded, and the relative earning abilities of each of the parties. *Keip*, 332 Ill. App. 3d at 884; *McGuire*, 305 Ill. App.3d at 478.

¶ 68 In *Carpel*, the trial court had expressly denied the wife's request for attorney fees because the trial court found that "each party ha[d] sufficient assets or income to pay his or her own attorneys' fees." However, evidence established a gross disparity in the couple's income potential

and the drastic change in the wife's lifestyle, which the trial court had failed to consider in denying the petition for fees. Thus, because the Fourth District Appellate Court remanded the cause to the trial court for further proceedings on other matters, it vacated the trial court's denial of the wife's request for attorney fees so that the trial court could reconsider whether the wife deserved a discretionary award for attorney fees. *Carpel*, 232 Ill. App. 3d at 832-33.

¶ *69* Here, in denying the request for fees, the trial court considered the disparity of the parties' assets, their income potential, and Mary Beth's lifestyle. While the trial court noted the great disparity between the parties' resources, the trial court could not find a corresponding inability to pay on the part of Mary Beth. To the contrary, the court found that Mary Beth appeared to have an existing ability to pay without ever touching assets. The evidence established that Mary Beth had net income of approximately $10,500 per month, including her income as a non-equity partner at an accounting firm and the maintenance she received from respondent. While incurring additional fees for ongoing litigation, Mary Beth had been able to pay off certain attorney fee debts. Mary Beth testified that she paid $46,000 in June 2012 for a down payment on a house for two of her adult children, neither of whom were employed. Mary Beth also paid for cell phones and cars for two of her adult children. The trial court found that, by eliminating only a few such expenditures, Mary Beth could easily pay off the attorney fees within a reasonable period of time, without ever invading any principal or touching other assets. In fact, the court noted that Mary Beth exhibited the ability to expend significantly more than the amount claimed in attorney fees through the down payment on the house for her children. Having reviewed the record and the parties' briefs, we cannot conclude that the trial court abused its discretion in denying the amended petition for contribution to attorney fees.

¶ 70 III. CONCLUSION

¶ 71 Based on the preceding, we affirm the judgments of the circuit court of Lake County in each appeal.

¶ 72 Appeal No. 2-12-1231, affirmed.

¶ 73 Appeal No. 2-12-1236, affirmed.